

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION Nos.799, 852, 853, 858, 866,1351,1353 & 1362 OF 2015

COMMON ORDER:

Heard learned counsel for the petitioners Sri Chandrasekar and Sri J.V.Prasad, learned standing counsel for 1st and 2nd respondents.

The facts and the legal objections in these writ petitions are substantially same and similar. The circumstances referred to in writ petition No.799 of 2015 are referred to for disposal of these writ petitions.

The issue arises under the Tobacco Board Act, 1975 (for short 'the Act'). The petitioner prays for Mandamus to declare R.S.No.2014-15/Production/182 dated 14.11.2014, as illegal, contrary to the Act/ Rules made thereunder and the contemporaneous production policy dated 19.08.2014.

The petitioner is a farmer growing tobacco. The petitioner claims to be doing tobacco farming after registering with the respondents. For the current season the petitioner applied for registration as tobacco grower. While the application for registration is considered, the 2nd respondent issued notice dated 14.11.2014 to a family member/wife of petitioner. Through the notice, it is informed that the addressee of the notice constructed unauthorized Tobacco Barn and the construction of Barn is without registration of Tobacco Board and is an offence. It is further, as a word of caution, stated that the farmers who grow tobacco without permission are facing troubles in selling the tobacco grown by them. Therefore, through the notice, it is stated that the addressee should not grow tobacco crop and should not

undertake curing of tobacco at the unauthorized Barn without Tobacco Board's registration for the year 2014-15. The consequences if violated are intimated to the addressee. In this factual background, the petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India praying for Mandamus to declare the notice dated 14.11.2014 and the non-renewal of petitioner's application for the crop year 2014-15, as illegal and arbitrary.

On receipt of notice, the respondents filed counter affidavit. The respondents, no doubt, through the detailed counter affidavit tried to impress upon this Court that there is hardly a cause of action for filing the present writ petition, secondly, the notice impugned in the writ petition is required to be considered as one issued by the authority in exercise of its power to regulate the "tobacco" under the Act and no exception can be taken. The respondents rely upon the proceedings dated 17.10.2014 for twin purposes to oppose the writ prayer, namely, (a) that on 17.10.2014 the application of petitioner for registration admittedly filed before 30.09.2014, is deemed to have been rejected as petitioner failed to rectify or give proper explanation to the objections raised by the 2nd respondent, (b) that the petitioner has alternative remedy of revision before the Board and invocation of jurisdiction of this Court under Article 226 of the Constitution of India is unwarranted.

The learned counsel for parties have reiterated the stand taken in pleadings.

The petitioner is admittedly a tobacco grower. It is the case of the petitioner that the petitioner has been undertaking tobacco growing by taking permission from the respondents. The case on hand attracts

procedure for renewal of application.

Rule 33-A of the Tobacco Board Rules 1976 (for short 'the Rules'), reads as follows:

33-A. Procedure and principles for grant of registration or renewal of registration as grower of virginia tobacco:

(1) The Board shall, in each year, lay down the policy with a view to regulating the production and curing a virginia tobacco having regard to the factors specified in clause (a) of sub section (2) of section 8, and such policy shall be published in all or any of the following manners, namely, in the form of book or pamphlet or by notification in widely circulated newspapers.

(2) The Board shall constitute a Committee (herein after in this rule and rule 33B referred to as the Committee) consisting of five members of the Board to lay down criteria for registration or renewal of registration as grower of virginia tobacco.

(3) While laying down the criteria the Committee shall have regard to.

(a) the production policy laid down by the Board under sub-rule

(1);

(b) the previous experience of the applicant in growing Virginia tobacco;

(c) the facilities the applicant possesses for cultivating and flue

curing of tobacco;

(d) improved cultural practices being followed by the grower;

(e) whether the grower is also a nursery grower;

(f) the conduct of the grower in complying with the provisions of

the Act and the rules and regulations made thereunder and

the terms and conditions of certificate of registration or licence,

directions issued and stipulations laid down by the Board; and

(g) such other related factors as the Committee may

consider
necessary.

(4) On receipt of applications for registration or renewal of registration as grower, the Secretary or other officer authorized under sub rule (1) of rule 33 shall scrutinize the applications and may make such inquiry as he deems fit and if after such enquiry he is satisfied that the applicants satisfy the criteria laid down by the Committee, constituted under sub-rule (2), he shall grant registration, or renewal of registration, as the case may be.

(5) For the purpose of any enquiry under sub-rule (4) the Secretary or other officer referred to in the said-rule may call for such further information as he deems fit from any applicant and the applicant shall furnish such further information within the period specified by the Secretary or other officer, and, if the information so called for is not furnished, the Secretary or other officer shall place the application along with other particulars before the Committee for consideration.

(6) If for any reason the Secretary or other officer considers that registration or renewal of registration should not be granted to an applicant, the matter shall be placed before the Committee which, after making such inquiry as it deems fit, may either grant or refuse such registration or renewal of registration.

(7) The decision of the Committee shall be communicated to the applicant within fifteen days from the date of such decision.”

From the above rule position, it is clear that on receipt of application either for registration or renewal from a grower, the Secretary or the Officer authorized in this behalf shall scrutinize or enquire the contents of application as he deems fit and if satisfied with his enquiry or details submitted by the applicant, shall grant registration or renewal to a farmer, as the case may be. Sub rule 5 of Rule 38-A of the Rules provides for calling further information from the applicant for the purpose of conducting inquiry under sub rule (4) of Rule 33-A of the Rules. The applicant if furnishes the information

desired by the authority or that after receipt of information from the applicant the Officer is not satisfied with the information, under sub rules (6) and (7) of Rule 33-A of the Rules, a decision is taken and communicated to farmer. Juxtaposing the case on hand with the statutory requirement, what is evident from the record is that communication dated 17.10.2014 even if it is assumed has been received by the petitioner, the instant communication is without stipulation of time for compliance by the petitioner. Either to submit explanation or make good the deficiencies which the Board intends the petitioner to undertake and complete, time/date ought to have been stipulated. The date of receipt of said communication by the petitioner is not clear. On the ground that there is default in complying with the requirements of communication dated 17.10.2014 the respondents cannot presume that the application filed by the petitioner for grant of permission to grow tobacco is rejected. Having regard to the peculiar facts and circumstances of the case, it is required to be held that the communication dated 17.10.2014, at best, is a communication under sub rule (5) of Rule 33-A of the Rules. No time is stipulated in the said communication for reply or rectifying the defects by the petitioner, therefore, to meet the ends of justice and also having regard to the advanced stage of farming, the petitioner is complaining inaction in passing orders on the renewal application against the respondents. This Court considers it appropriate to give one week time from today to petitioner(s) to submit explanation/compliance of objections to the respondents and the respondents on receipt of such representation/compliance report, are free to pass appropriate orders under sub rules (6) and (7) of Rule 38-A of the Rules and as per the Policy in vogue.

All the writ petitions are disposed of accordingly. No order as to costs.

Miscellaneous petitions, if any pending, in the writ petitions shall stand closed.

S.V. BHATT,

J

Date: 04.02.2015

Stp